

PART 9

CONTRACTOR QUALIFICATIONS

TABLE OF CONTENTS

SUBPART 9.1 - RESPONSIBLE PROSPECTIVE CONTRACTORS

9.104-1	General standards.
9.105	Procedures.
9.105-2	Determinations and documentation.
9.106-1	Conditions for preaward surveys.
9.106-2	Requests for preaward surveys.
9.106-3	Interagency preaward surveys.
9.106-90	DLA preaward survey monitors.
9.106-91	Capability surveys for workshops for the blind and other severely handicapped.

SUBPART 9.2 - QUALIFICATIONS REQUIREMENTS

9.202	Policy.
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SUBPART 9.3 - FIRST ARTICLE TESTING AND APPROVAL

9.306	Solicitation requirements.
9.307	Government administrative procedures.

SUBPART 9.4 - DEBARMENT, SUSPENSION, AND INELIGIBILITY

9.404	Parties Excluded from Procurement Programs.
9.405	Effect of listing.
9.405-1	Continuation of current contracts.
9.406	Debarment.
9.406-3	Procedures.
9.406-90	Procedures for debarments based on poor performance.
9.407	Suspension.
9.407-3	Procedures.

SUBPART 9.1 - RESPONSIBLE PROSPECTIVE CONTRACTORS

9.104-1 General standards.

(c)(90) Assuring that contracts are awarded to responsible prospective contractors necessitates the maintenance of contractor performance history and development of criteria for its use. Occasional quality deficiencies in contractor performance may be unavoidable, but if the defects are of a critical or repetitive nature and the contractor is not amenable to taking corrective action, such circumstances, may constitute support for finding a prospective contractor nonresponsible for award of contracts. Results, both positive and negative, from the System for the Analysis of Laboratory Testing (SALT) program, and other applicable quality history records, such as those from the Quality Evaluation Program (QEP) and from the Customer Depot Complaint System (CDCS), should be included in the contracting officer's determination and documentation of contractor responsibility. Contractor quality performance records will not be limited to product quality deficiencies, but also will include discrepancies due to inadequate packaging, improper or missing documentation, overages, shortages, misdirected or damaged shipments, and similar discrepancies. Individual and summary records of actions taken will be maintained for review by management. If there are overriding reasons for awarding a contract to a supplier who has an unsatisfactory quality history, the contract file will be documented accordingly, and a Quality Assurance Letter of Instruction (QALI) shall be submitted to the activity responsible for Government acquisition quality assurance at source or destination.

(c)(91) Contracting offices will maintain appropriate documentation to facilitate assessment of contractor's recent delivery performance. Contracting personnel should utilize performance data on both currently active and recently closed awards (if available) in responsibility determinations and when considering contractors for placement on the DLA Contractor Alert List (CAL). Absent identifiable positive corrective action, poor past performance indicates poor future performance. Documentation of contractor-caused delinquencies should serve as sufficient evidence to substantiate a nonresponsibility determination. (For procedural consequences of that determination with regard to small businesses, see, generally, FAR 19.6 and DFARS 219.6.) A supplier's repeated refusal to perform purchase orders issued in accordance with small purchase procedures may also be used as a basis for not awarding future contracts. Since inaccuracies in delivery data may occur, performance histories should be reviewed and furnished to the contractor before serious actions are taken. Overall delivery performance data shall be based on ship dates not receipt dates, due to problems in obtaining timely receipt data.

(g)(90) Standards for drugs. The Food and Drug Administration (FDA) has cognizance of all quality aspects of certain medical items (predominantly drugs) in accordance with the DoD -FDA Interagency Agreement on Drugs, dated 17 December 1975. At the request of DPSC, FDA will review the capability of a supplier to produce drugs and biologics of an appropriate quality whenever acquisition by DPSC of such an item is pending. It is within the discretion of the contracting officer to rely upon FDA conclusions regarding the capability of such offerors to meet required quality standards. A determination by FDA of unsatisfactory quality based on regulatory action shall necessitate a mandatory rejection of the offer by the contracting officer.

(90) The "Defense Logistics Agency Contractor Alert List" (CAL) is a monthly listing of suppliers who may require special evaluation before a determination of responsibility can be made. The list is provided to contracting offices by the Defense Contract Management District East (DCMDE) based on input from all Defense Contract Management Districts (DCMDs) and other contracting offices. Suppliers are added to the list when they are recommended for a preaward survey (PAS) by a contract administration office (CAO) for a particular reason. Contracting officers shall consider the DLA CAL as they would other similar data related to contractor performance. Appearance on the list (or any other indication of questionable prior performance, as set forth in 9.106-1(a)(90)(1) through (9)) does not mean a supplier is nonresponsible, but it puts the contracting officer on notice to consider carefully and deliberately the need for additional steps in making a responsibility determination in individual cases. (Any questions pertaining specifically to the Alert data should be directed to the PAS monitor at the CAO that has cognizance over the contractor involved, rather than to the contracting officer.)

9.105 Procedures.

9.105-2 Determinations and documentation.

(b) Support documentation. If a preaward survey is not obtained on a proposed award exceeding \$100,000, the contracting officer shall include in the contract file a memorandum explaining the basis for the determination of responsibility, addressing each of the applicable standards in FAR 9.104. When the contracting officer makes a determination regarding the prospective contractor's responsibility that is contrary to that recommended in the preaward survey report, the reason for not following the preaward survey report recommendation shall be included in the contract file. In each instance where the preaward survey report recommendation is not followed, the case must be reviewed and concurred in by the chief of the contracting office and at DISC by the Commodity Business Unit Chiefs.

The contracting officer shall provide written notice to the surveying activity that performed the preaward survey of the reason for not following the preaward survey recommendation.

9.106-1 Conditions for preaward surveys.

(a)(90) Although a formal PAS is not normally requested for acquisitions valued at \$100,000 or less, there are circumstances which justify conducting a PAS (formal or informal), regardless of the dollar value of the acquisition under consideration. (An informal PAS is one in which the contracting officer's request for information is able to be fulfilled by a phone call to the CAO component, and may not necessitate contacting the firm or individual in question. A formal PAS, on the other hand, requires, at a minimum, the CAO PAS monitor to conduct a telephone survey, and may require one or more site visits to the prospective contractor's location. A formal PAS always incorporates an informal survey.) Because the survey is the primary means by which the responsibility of some contractors can be determined, its performance is strongly recommended on a prospective contractor (manufacturer or nonmanufacturer) that:

(1) Has been listed on the GSA List of Parties Excluded from Federal Procurement Programs within the past 3 years (or other locally-determined time period);

(2) Is (to the extent determinable from local records) a first-time Government contractor, or has had a performance break from Government business of 3 or more years' duration (or other locally-determined time period);

(3) Is undergoing or has undergone reorganization under bankruptcy laws within the past 3 years (or other locally-determined time period);

(4) Has been terminated within the past 3 years (or other locally determined time period) for default;

(5) Has negative quality records (PQDRs, RODs, etc.) in the Quality Evaluation Program (QEP), is on the Contractor Alert List (CAL), has a poor lab test record (as indicated by the System for the Analysis of Laboratory Testing (SALT) program), or is otherwise known to the contracting officer to have a poor or marginal performance history;

(6) Has, within the past year (or other locally-determined time period), received a negative PAS for any item within the same Federal Supply Class (FSC), or for the same type of service, as the item or service being purchased;

(7) Has failed to liquidate indebtedness to DLA (the extent of the indebtedness that would normally dictate a PAS shall be determined locally);

(8) Is a transferee in interest of a former Government contractor; or

(9) Is the subject of information that is not sufficient on which to base a responsibility determination, or is a current contractor about whom the historical capability data, in terms of productive capacity, quality assurance, financial ability, etc., is unavailable to the contracting officer or is inconclusive.

(a)(91) When an offer received from a prospective contractor described in (a)(90)(1) through (9) above is proposed for award, and the contracting officer decides that actual performance of the PAS is in the best interests of the Government, the contracting officer shall request the survey, and provide the rationale for that request in the "Remarks" section of the SF 1403, Pre-award Survey of Prospective Contractor (General). When a PAS is requested with respect to an offeror described in (a)(90)(1) above, the contracting officer shall identify integrity as a factor about which information is needed and shall ask that the PAS team specifically identify the corrective actions undertaken by the prospective contractor to address the problems that resulted in the contractor's being listed on the GSA List of Parties Excluded from Federal Procurement Programs.

(a)(92) Final determination of the appropriateness of conducting a PAS always rests with the contracting officer. For that reason, this section does not mandate survey performance. Nevertheless, use of the survey is strongly encouraged for those prospective contractors described in (a)(90)(1) through (9) above. If a contracting officer decides not to request a PAS under any of these circumstances, the contracting officer shall document the contract file with the basis for that decision (see 9.105-2).

9.106-2 Requests for preaward surveys.

(90) Generally, a preaward survey shall be requested only when award is contemplated to a firm from which a bid or proposal has been received. However, a preaward survey may be requested of the facilities or firms supplying perishable food items before receipt of a bid or proposal when the time between opening/closing and award would not be sufficient for a survey following receipt of an offer. Concurrent requests for preaward surveys may be made in emergency situations and/or when multiple awards are contemplated. The need to request concurrent preaward surveys will depend upon the circumstances of the individual acquisition. Contracting officers shall obtain the agreement of the appropriate CAO preaward survey monitor prior to the submission of such requests. Although FAR 9.106-2(d) specifies a norm of 7 working days for conducting preaward surveys, except for FDA determinations, contracting offices should provide for the maximum allowable time, particularly if a negative finding is anticipated or a secondary survey will be required. When the contracting office needs a response in less than 7 working days, the surveying activity should be provided with the reason for the expedited survey. Surveying activities should notify contracting officers of survey results by telephone or electronically-transmitted message on the day the survey is mailed.

(a) Additional factors would include the need for special facilities (e.g., tools, machines, test facilities) required to produce the item. Failure to liquidate indebtedness indicates a lack of responsibility. Therefore, if it is proposed to contract with firms indebted to DLA, and the proposed contract would otherwise require a preaward survey, an annotation should be made in the "Remarks" section of the SF 1403.

(a)(ii) Evaluation of a contractor as a planned producer will not affect the outcome of the PAS for other than industrial preparedness purposes. Any prospective contractor receiving a negative PAS for production or quality assurance capability with regard to an existing/potential Industrial Preparedness Planning List (IPPL) item should neither be solicited nor enrolled as a planned producer.

(e) Contracting officers shall restrict their requests for preaward survey information to that which is not already available to the contracting office. The contracting officer must determine the scope of the preaward survey to be performed. (Preaward survey requests on sole source suppliers will be limited to partial surveys.) The only factors to be investigated (e.g., production backlog, finances, and quality history) are those which actually affect or indicate the contractor's ability to perform under the contract and for which the contracting officer does not have sufficient knowledge to make a responsibility determination.

(i) When limited information is required, it can often be obtained through telephonic contact with the PAS monitor at the cognizant contract administration office (CAO), precluding the administrative effort associated with a formal PAS request.

(ii) For items assigned to the U.S. Department of Agriculture, the U.S. Department of Commerce, and/or the U.S. Army Veterinary Corps for source inspection, the quality assurance personnel representing the contracting officer, and other military agencies, as deemed necessary,

will be requested to participate in the PAS, and their comments will be included in the quality assurance portion of the report.

9.106-3 Interagency preaward surveys.

(b) The list shall be retained with the contract file.

9.106-90 DLA preaward survey monitors.

(a) Each DSC will designate an organizational element to serve as the focal point for preaward surveys and to be the principal point of contact with PAS monitors at surveying activities. The focal point will review PAS requests for completeness and accuracy before forwarding these requests to surveying activities. Upon receipt of completed preaward surveys, the focal point will review the reports and shall consult with available technicians in particular areas, such as Cost and Price Analysts, when there are doubts as to the validity of the information in the survey report. If the PAS contains information questioning a company's quality control, then the survey report shall be reviewed with the DSC Quality Assurance personnel.

(b) A register of all PAS requests and responses, both formal and informal, shall be maintained in a current status by the PAS monitor at each DSC. As a minimum, this register shall include:

(1) PAS or FDA number (to provide an audit trail).

(2) Date of Preaward Survey request. Note: If the request is made by phone and a written report is requested, the SF 1403 must follow by mail on the same day as the telephone request.

(3) Date completed report to be returned (Block 10). (This is the date by which the surveying activity is to mail the completed report.)

(4) Extended date when extension is granted.

(5) Date telephonic or electronically-transmitted report is received by DSC.

(6) Date Preaward Survey report is received by DSC.

(7) Prospective contractor's name and location.

(8) Surveying activity's location.

(9) Solicitation number (RFP/IFB/PR Number).

(10) Buyer or contracting officer name.

(11) Dollar amount of proposed award.

(12) Brief identification of item to be acquired.

(13) Recommended action, whether "A," "P," or "N" (Affirmative, Partial, or Negative).

(14) Remarks. Indicate whether recommendation was overturned, and add any other pertinent comments. (See 9.105-2(b).)

(15) Date of award, if any.

9.106-91 Capability surveys for workshops for the blind and other severely handicapped.

(a) The contracting office, upon request from the Committee for Purchase from People who are Blind or Severely Disabled, shall request a capability survey to determine the capability of the workshop(s) to produce specific items being considered for addition to the Procurement List.

(b) The contracting office, when requesting a capability survey, shall make the request on Standard Form (SF) 1403, Preaward Survey of Prospective Contractor (General). The contracting office should emphasize factors concerned primarily with production capabilities. When a capability survey is being requested, the form shall clearly indicate the request is for a "Capability Survey" only.

(c) The contracting office shall forward requests for capability surveys to the appropriate office, in accordance with DFARS 209.106-2. The contracting office shall furnish a copy of the completed survey to the Executive Director, Committee for Purchase from People who are Blind or Severely Disabled.

(d) Capability surveys will be executed by the cognizant contract administration office in accordance with DLAM 8300.1, Defense Contract Management Command Industrial Support Manual, Section 1-102(i).

SUBPART 9.2 - QUALIFICATIONS REQUIREMENTS

9.202 Policy.

(a)(1) The chief of the contracting office shall provide to HQ DLA, ATTN: MMPOA and MMLXE, a brief summary of the proposed plan to establish a qualification requirement. Approval by HQ DLA is not required, unless HQ DLA requests a review of the plan. The chief of the contracting office shall approve the establishment of a qualification requirement, subject to the requirements of FAR Subpart 9.2 and after considering any comments of the activity Competition Advocate and the activity Commercial Advocate. When a qualification requirement is proposed for application to an item described by a document that is subject to the Defense Standardization Program, the procedures in DoD 4120.3-M, Appendix B, apply, including the requirement for OASD approval.

SUBPART 9.3 - FIRST ARTICLE TESTING AND APPROVAL

9.306 Solicitation requirements.

(e) Good technical judgment must be applied in determining the total number of first article units to be tested for a given contract. This must be a sufficient quantity to demonstrate clearly that materials used, manufacturing processes employed, workmanship standards utilized, and the method employed for the control of quality are capable of producing an item which meets all the contract requirements.

(f) Whenever a first article requirement is waived for a contractor that previously provided the same or a similar item, the contract shall contain a commensurately shorter delivery schedule than if the requirement had not been waived. FAR prevents that difference in delivery schedule from being used as an evaluation factor for award; any additional performance accelerated under a Delivery Evaluation Factor or similar program may be considered in best-value source selections. The contracting officer should pursue consideration from the contractor, or contract price adjustment for separately-priced first article testing requirement, in appropriate circumstances when a first article waiver is granted.

(h) To assist Government and contractor quality assurance personnel during the production phase, contracting officers shall ensure that the contract requires the contractor to hold at least one approved first article unit at the production facility until all production quantities have been produced and accepted. This first article unit can be referred to as a production or manufacturing standard and baseline for examination when defects are reported on delivered material or problems are uncovered during production.

(90) Whenever first article testing is to be performed, identify in the contract the sequence of processes, tests, etc.; the number of units to be tested; the data required; and the conformance criteria for each requirement specified. Collaboration with the Military Services may be necessary to identify these requirements. Refer to applicable paragraphs in the specifications, **as appropriate**. The contracting officer shall refer first article test reports to the quality element for evaluation and recommendations.

(91) The contracting officer shall document the official contract file, clearly showing the acceptance/rejection criteria used to approve or disapprove the first article. First articles shall be disapproved whenever nonconforming parts and/or material are used in the manufacture of the first article. Nonconformances must be corrected before materials or components for production are purchased by the contractor.

9.307 Government administrative procedures.

(b) Contracting officers shall not grant conditional approval of first articles for DLA contracts without specific approval at a level higher than the contracting officer.

(90) The contracting officer, subject to the recommendation of the ICP quality assurance specialist, shall delegate the authority to accept either first article test results (documentation) or the tested items themselves to the administrative contracting officer (ACO) in consultation with the DCMC quality assurance representative and the staff specialist/engineer, except when Engineering Support Activities retain acceptance authority or the ICP has specific reasons to withhold that authority. Such delegation shall be accomplished as provided in FAR 42.202(c).

SUBPART 9.4 - DEBARMENT, SUSPENSION, AND INELIGIBILITY

9.404 Parties Excluded from Procurement Programs.

(c)(1) The Special Assistant for Contracting Integrity (SACI), General Counsel, HQ DLA, shall furnish to the General Services Administration all additions, deletions, or modifications to the list of Parties Excluded from Federal Procurement and Nonprocurement Programs resulting from DLA action.

(c)(4) Departmental records. The records required by FAR 9.404(c)(4) are maintained for DLA by the SACI.

(c)(90) Each DLA activity shall obtain and have available the most recent edition of the list of Parties Excluded from Federal Procurement and Nonprocurement Programs. Consult the list before completing any contracting action identified in FAR 9.405, 9.405 -1(b), or 9.405-2.

9.405 Effect of listing.

(a) In order to take one of the contracting actions identified in FAR 9.405, 9.405 -1(b), or 9.405-2, the activity commander shall forward a written request, including supporting information and rationale, to the SACI via the local counsel for a determination that there is a compelling reason to make an exception. The proposed contracting action may not be taken until an exception is granted in writing by the SACI.

(90) Contracting actions concerning contractors recommended for debarment or suspension.

(a) From the time a report recommending debarment or suspension is forwarded to the General Counsel, until determination is made whether to initiate debarment or suspension action, the recommending activity and any other affected DLA activity that is aware of the recommendation will coordinate with the General Counsel, before taking any of the following actions with respect to the subject contractor:

(1) Awarding a contract, issuing a purchase order, or entering the contractor's name in an automated purchase system.

(2) Renewing or otherwise extending an existing contract or subcontract.

(3) Consenting to or approving a subcontract to be awarded by or to the contractor.

(4) Authorizing novation of a contract or agreeing to change of name for the contractor.

(b) Upon submission to the General Counsel of a report recommending debarment or suspension, contracting officers, in coordination with local counsel, will consider removing the subject contractor's name from Standard Automated Small Purchase Systems (SASPS). If the removal is accomplished, one contracting officer at each affected activity shall notify the contractor that the contractor has been removed from SASPS and a report recommending the contractor's suspension or debarment has been submitted to HQ DLA. The notice shall include a brief summary of the reasons for the recommendation. Through Counsel at the activity, each affected activity shall notify the General Counsel, by telephone when the contractor is removed from SASPS. For small purchase procedures other than SASPS, see subparagraph (c)(3) below.

(c) Prior to a determination whether to suspend or debar a contractor recommended for debarment or suspension, if the subject contractor submits an offer that is otherwise in line for an award, the cognizant contracting officer will review the fact sheet furnished pursuant to 9.406-3(a)(ii)(90)(A) below and any other supporting data that the contracting officer deems relevant.

(1) After review of the fact sheet and supporting data, if the contracting officer proposes to award the contract to the subject contractor, the contracting officer, through local counsel, shall coordinate with the General Counsel, prior to making the award.

(2) After review of the fact sheet and supporting data, if the contracting officer determines that the contractor is not responsible, the contracting officer shall notify the contractor of the determination in writing, advise the contractor that a recommendation to suspend or debar the contractor has been forwarded to HQ DLA, and provide to the contractor a brief summary of the reasons for the recommendation and for the determination of nonresponsibility. In addition:

(i) If the contractor is a large business, the contracting officer shall proceed with award to the next low responsible offeror that has submitted a responsive bid or technically acceptable proposal.

(ii) If the contractor is a small business concern, the contracting officer shall include with the FAR 19.602-1(a)(2) referral to the Small Business Administration a copy of all elements of the report required by DFARS 209.406-3(a)(ii) and 9.406-3(a)(ii)(90) of this directive that would be releasable directly to the contractor.

(3) If a contractor inquires as to the status of a quote it submitted under simplified acquisition procedures other than SASPS, advise the contractor that a recommendation to suspend or debar the contractor has been forwarded to HQ DLA whenever the facts supporting the recommendation are the basis for rejecting the contractor's quotation. Provide the contractor a brief summary of the reasons for the recommendation.

(4) The contracting officer, through local Counsel, shall coordinate by telephone with the General Counsel, actions to be taken under subparagraphs (2) and (3) above.

(91) Review of files for potential claims and additional remedies.

(a) When a DLA contracting office learns that a contractor has been suspended, debarred or proposed for debarment, or a report has been submitted pursuant to DFARS 209.406 -3(a) recommending debarment or suspension, the activity's records shall be reviewed to determine whether the activity has current or has had past contractual relationships with the contractor or its affiliates and, if so, whether the Government may have any basis pursuant to those relationships for recovery of damages from, or other claims against, the contractor.

(b) If a DLA activity determines that there may be such a basis, information stating the factual basis in as much detail as practical shall be forwarded promptly to the General Counsel.

9.405-1 Continuation of current contracts.

(90) Authorization for novation of a contract or change of name agreement held by a contractor debarred or suspended by any Federal executive agency or proposed for debarment by any DoD component shall be coordinated with the DLA SACI through local counsel, prior to such authorization.

9.406 Debarment.

9.406-3 Procedures.

(a)(i)(90) Reports based on indictments or convictions.

(A) Submit reports recommending suspension based upon an indictment or criminal information to the General Counsel, within 2 weeks of the date of indictment or information and include a copy of the indictment (signed, with docket number and date).

(B) For purposes of recommending debarment based on a conviction, submit the report within 2 weeks of the date of sentencing. Include a copy of the judgment/conviction order.

(a)(ii)(A) The activity contact point shall be an attorney in the Counsel's office of the DLA activity submitting the report.

(a)(ii)(90) In addition to the information required by DFARS 209.406 -3(a)(ii), include the following:

(A) A brief fact sheet setting forth the essential reasons for the recommendation to suspend or debar.

(B) The name of the investigative agency, or agencies, if any, that investigated either the facts reflected in the report or other aspects of the contractor's business dealings with the Government.

(C) Available Dun & Bradstreet reports on the subject contractor, including the Dun & Bradstreet Government Activity Report, and the DUNS (Dun & Bradstreet) number of the subject contractor, if available.

(91) When the basis for debarment or suspension is nonperformance, untimely performance, unsatisfactory quality or production performance, noncompliance with contract terms, or any other cause under FAR 9.406-2(b), include an explanation of previous contract steps taken to protect the Government's interest (e.g., termination for default, determinations of nonresponsibility) or an explanation of why such steps were not taken.

(92) When preparing a report pursuant to DFARS 209.406 -3(a), contact the cognizant DCMD(s) to obtain the information required by DFARS 209.406 -3(a)(ii)(F). If DCMD records reflect contracts with other DLA contracting offices, notify those other DLA contracting offices of the proposed recommendation and furnish them and the DCMD(s) the information upon which the report will be based. State in the report that this intra-agency coordination has been accomplished, list the DLA activities contacted, and summarize the information exchanged.

(a)(iii) The report required by DFARS 209.406 -3(a) shall be signed by the contracting officer and submitted in duplicate by the Commander of the PLFA recommending activity to the General Counsel, HQ DLA. Designate the report "For Official Use Only," unless the contents of the report warrant a security classification.

(a)(iii)(90) When a report recommending debarment or suspension is forwarded to the General Counsel, distribute copies of the fact sheet described in 9.406 -3(a)(ii)(90)(A) to contracting personnel at the recommending activity assigned to commodities for which solicitations are likely to result in offers from the contractor identified in the report and to other DLA activities identified pursuant to (ii)(92), above.

(c)(6) The effect includes the possibility that a preaward survey evaluation factor may be applied to offers from the debarred source for the period of time specified in 9.106 -1(a)(1) after the debarment is no longer in effect (see 15.605-90).

9.406-90 Procedures for debarments based on poor performance.

(a) Policy. Debarment reflects a business judgment about a contractor's trustworthiness, commitment, and capability to successfully perform Government contracts. The debarment regulations recognize two general bases for debarment -- fraudulent or other seriously improper conduct suggesting that a contractor cannot be trusted to fulfill its contractual obligations and poor performance suggesting an inability to fulfill contractual obligations. Responsibility for managing the DLA Fraud Program has been assigned to the General Counsel. Thus, in those instances where suspected criminal misconduct provides the basis for debarment action, the responsibility for initiating action to ensure that a debarment report is forwarded to HQ DLA for further action lies primarily with local counsel. Conversely, where poor performance is to be relied upon as a basis for debarment in accordance with FAR 9.406 -2(b), the responsibility for ensuring that action is taken to initiate debarment proceedings lies primarily with the cognizant contracting officer.

(b) Referral. The contracting officer, together with the other members of the contracting team, must initiate timely, effective action to ensure that the Government's business interests are protected when a contractor's action or inaction threatens successful contract performance. The contracting officer is responsible for ensuring that contracts are awarded only to responsible contractors with a high likelihood of being able to successfully perform in accordance with contract terms and conditions. Contracting officers are also responsible for making effective use of available contract remedies, including action to terminate contracts for default and recover for damages suffered, and pursuing extra -contractual remedies, such as debarment of poor performers, where the Government's business interests are at risk. In accordance with the procedures contained in subparagraph (c) below, the cognizant contracting officer will refer to local counsel those instances of contractor nonperformance that are so serious as to justify consideration of possible debarment action.

(c) Decision-making process.

(1) Before referring a particular contractor to local counsel for possible preparation of a debarment report, the cognizant contracting officer must be able to document the poor performance which will form the basis for a debarment recommendation. The contracting officer must also be able to demonstrate why debarment is the only reasonable alternative available left to the Government. Efforts by the Government to protect its interests by less severe measures (e.g., changing the point of acceptance, suspension of progress payments or placing the contractor on the local contract award checklist) must be clearly identified. While debarment decisions are based on a determination of a contractor's present responsibility, detailed knowledge of that contractor's performance history and record including actions taken by the Government is critical to the debarring official's determination. Referrals to local counsel should include all current information necessary to support the business decision that is to be recommended to the DLA SACI. The contracting officer should be prepared to update the information provided once the debarment process is underway and to participate with local counsel in presenting the case to the DLA SACI.

(2) When referring a contractor to local counsel for consideration of a possible debarment recommendation on the basis of poor performance, the cognizant contracting officer shall provide:

(i) A clear identification of the contractor, including divisions, subsidiaries, and affiliates, and contractor employees, officers, and directors, specifically identifying the contractor personnel who have participated in the Government contracting process.

(ii) A detailed account of the contractor's current active contracts, recent, relevant performance history, and history of performance problems prompting the referral. While this detailed accounting of contracting performance will necessarily focus on contracts awarded by DLA, performance on other Government contracts must also be addressed. In this connection, the assigned contract administration office should be asked to provide information, as well as comments, on the action being considered.

(iii) The reasons identified for the contractor's poor performance and the action taken by the Government to protect its business interests.

(iv) A discussion of whether a debarment action directed toward a specific division, organizational element, or commodity would adequately protect the Government's interests.

(v) A discussion of the period of debarment to be recommended to the DLA SACI, supported by rationale that addresses the likelihood that the contractor will be able to take corrective actions necessary to successfully perform in the future.

9.407 Suspension.

9.407-3 Procedures.

(c)(4) The effect includes the possibility that a preaward survey evaluation factor may be applied to offers from the suspended source for the period of time specified in 9.106 -1(a)(90)(1) after the suspension is no longer in effect (see 15.605-90).